

In the Matter of Merchant Mariner's Document No. Z-274221-D1 and All other Seaman Documents

Issued to: SAMUEL JOSEPH CALISTE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1196

SAMUEL JOSEPH CALISTE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 22 July 1959, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as third cook on board the United States SS EXCELLENCY under authority of the document above described, on or about 11 April 1959, Appellant wrongfully created a disturbance; he assaulted and battered Chief Cook Taylor with a kitchen fork.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of the Chief Cook and that of three other crew members, none of whom actually witnessed the alleged battery.

In defense, Appellant offered in evidence his testimony. He stated that he was unarmed when attacked by the Chief Cook and cut with a knife. Appellant denied that he injured the chief cook with a fork.

After considering the evidence, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of fifteen months outright and nine months on eighteen months' probation.

FINDINGS OF FACT

On 11 April 1959, Appellant was serving as third cook on board the United States SS EXCELLENCY and acting under authority of his Merchant Mariner's Document No. Z-274221-D1 while the ship was in the port of Istanbul, Turkey.

On the morning of this date, Appellant started an argument in the galley with Chief Cook

Taylor after the Chief Steward told

Appellant the Master had complained about his breakfast. Appellant was boisterous, abusive and belligerent. He had been drinking intoxicating liquor. At the Chief Cook's request, the Chief Steward ordered Appellant to go to his quarters. Appellant refused to obey until this order was issued by the Master. Appellant was escorted to his room by the Chief Mate and told to stay there the rest of the day.

A short time later, Appellant returned to the galley where the Chief Cook was preparing food with a knife. Appellant picked up a large, two-pronged meat fork and stabbed the Chief Cook in the breast. During the struggle which followed, the Chief Cook was stabbed on his left arm and Appellant was cut with the knife. The Chief Cook was not seriously injured. Appellant was hospitalized.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the decision is against the weight of the evidence; the decision is contrary to law; and the suspension ordered is not commensurate with the offense.

OPINION

Appellant has submitted no details in support of his contentions on appeal. Consequently, it is adequate to state that the evidence accepted by the Examiner, on which the above findings of fact are based, constitutes substantial evidence to show that Appellant is guilty as alleged.

The Examiner rejected the version of the incident given by Appellant and accepted the testimony of the Chief Cook that he was performing his work in the galley when Appellant attacked him. Both the Chief Mate and the Chief Steward testified that the Chief Cook was quietly busy with his work while Appellant was acting in a belligerent manner and smelled of alcohol. Although the Chief Steward did not witness the stabbing, he saw the two men struggling and blood oozing from the Chief Cook's breast out of two holes in the white jacket worn by him. This strongly tends to refute Appellant's denial that he injured the Chief Cook with a fork.

There is additional circumstantial evidence, in support of the Chief Cook's testimony, which it is not necessary to relate in view of the blanket nature of the appeal submitted. The facts show that Appellant was the aggressor and the Chief Cook acted in self defense.

The suspension ordered is not excessive. The Examiner intimated that Appellant's document would have been revoked except for his prior clear record for fourteen years and the fact that the Chief Cook received only minor injuries.

ORDER

The order of the Examiner dated at New York, New York, on 22 July 1959, is ~~A~~AFFIRMED.

J.A. Hirshfield
Vice Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 18th day of October, 1960.